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MAR 18 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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March 18, 1993

HAND DELIVERED

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Notice - MM Docket 92-265, ✓
MM Docket 92-266, File No. W-PC6836

Dear Ms. Searcy:

In accordance with Section 1.1200 et. seq. of the Commission's rules, this is to advise that on Thursday, March 18, 1993, Peter O. Price, President, and Edward L. Milstein, Vice Chairman, of Liberty Cable Company, Inc. ("Liberty") and Henry M. Rivera, Esq. and Ann Bavender, Esq., Ginsburg, Feldman and Bress, Chartered, met separately with Commissioner Ervin S. Duggan and John C. Hollar, Legal Advisor to Commissioner Duggan, and Robert Corn-Revere and Maureen O'Connell, Legal Assistants to Chairman James H. Quello, to discuss issues affecting these proceedings and application.

The discussion involved presenting Liberty's position on cable programming access, cable rate regulation and New York Telephone's video dialtone application. The attachments to this Ex Parte Notice were used in that discussion.

A copy of this Ex Parte Notice was filed with the Commission and delivered to all of the above-named Commission personnel on March 18, 1993.

Sincerely,


Henry M. Rivera

Attachment

cc: Commissioner Ervin S. Duggan
John C. Hollar
Robert Corn-Revere
Maureen O'Connell

LIBERTY CABLE COMPANY, INC.
PETER O. PRICE. PRESIDENT

DISCRIMINATION EXISTS IN DISTRIBUTION OF VIDEO PROGRAMMING

▶ EXPRESS FACILITIES-BASED DISCRIMINATION

- Liberty and other SMATV operators pay higher prices than cable operators with same number of subscribers.
- Liberty and other SMATV operators fail to receive marketing support offered to cable operators.
 - = Discounts for new subscribers during incentive sales periods.
 - = Credits against fees spent on advertising.

▶ IMPLICIT FACILITIES-BASED DISCRIMINATION

- Overbuild policies: refusal by programmers to sell programming until 60 days after any overbuild of existing system - cable is always the existing system.
- Exclusive contracts - none exist with non-cable technologies.

▶ EXCLUSIVE CONTRACTS

- Cable says designed to encourage carriage of new programming.
- However, Time Warner asserts exclusivity over long established services.
- Even new services Time Warner offers to MVPDs everywhere except in NYC.

▶ DISCRIMINATION IS CAUSED BY CABLE OPERATORS EXERTING PRESSURE ON ALL PROGRAMMERS REGARDLESS OF WHETHER THE PROGRAMMER IS OWNED BY A CABLE OPERATOR.

REGULATIONS

- ▶ **DETAILED GOVERNMENT REGULATION IMPOSSIBLE**
 - Herculean task.
- ▶ **INSTEAD ADOPT REBUTTABLE PRESUMPTION OF ILLEGALITY FOR BOTH FACILITIES-BASED DISCRIMINATION AND EXCLUSIVE CONTRACTS.**
 - Applicable to any express or implicit "facilities-based" discrimination in price, availability or other term or condition of programming.
 - Applicable to any exclusive contract to which cable operator is party or which benefits cable operator.
- ▶ **TO OVERCOME PRESUMPTION, PROPONENT MUST SHOW DISCRIMINATION OR CONTRACT PROMOTES "EFFECTIVE COMPETITION."**
 - Must show promotes "effective competition" as that term defined in rate regulation section of act, Section 623(l)(1).
 - Must make showing for all affected areas (areas served by adversely affected MVPDs).
 - If affected area already has "effective competition," must show that discrimination or contract ensures continuation of "effective competition."

ENFORCEMENT

▶ PROGRAMMER MAY ASK FOR DECLARATION OF LEGALITY

- Within sixty days of start of presumptively illegal discrimination or exclusive contract.
- For discrimination and contracts currently in effect, within sixty days of adoption of programming access rules.
- Affected MVPDs served and have opportunity to respond.

▶ MVPD MAY ASK FOR DECLARATION OF ILLEGALITY

- At any time.
- By pleading, on good faith belief, sufficient facts to show a presumption of illegality.
- No actual injury required to be shown.
- Programmer responds and attempts to show discrimination or exclusive contract promotes "effective competition."

▶ FCC ORDERS COMPLIANCE AND ISSUES FORFEITURE



THE NEW YORKER

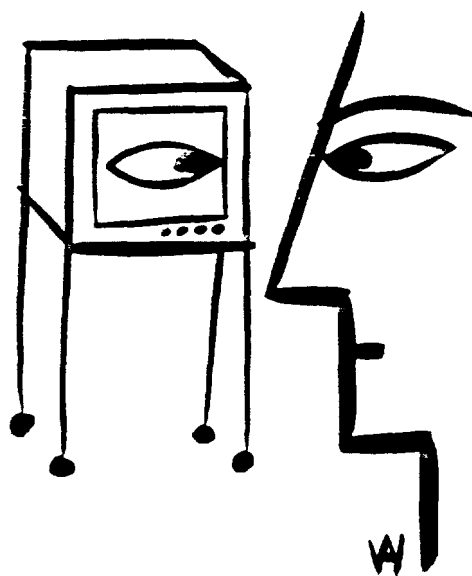
MARCH 15, 1993

ANNALS OF COMMUNICATIONS

CHANGING CHANNELS

While NBC and ABC grapple with management successions, mergers, and Mike Ovitz as producer, a new form of cable threatens to change the rules.

BY KEN AULETTA



Such a system of delivering television signals is not new, but before the F.C.C. ruling it could be used only to deliver signals to a single building, and not to bounce them from one building to another. In the year since the ruling went into effect, Price says, Liberty has signed up twelve thousand customers in Manhattan and is averaging two thousand new customers a month. The prize is the half-million cable customers who now subscribe to one of two Time-Warner cable systems, Manhattan and Paragon Cable. "We are now competing directly with Time-Warner," Price says. "We should be able to get from fifteen to twenty per cent of the market in Manhattan. And, given the rage at cable, we could get more."

Liberty's sales pitch is simple: If you're mad as hell and want to save money, sock it to the giant. Liberty offers up to seventy-three channel choices and a monthly charge that is a third to half as expensive as regular cable, and there is no installation charge, no matter how many TV sets

Just over a year ago, Richard Aurelio, the man who built the Time-Warner cable business in New York, characterized Liberty by telling the *Times*, "They're of no concern to me." Yet last month Time-Warner Cable mailed a blue-and-white flyer with the heading "Here's What You *Lose* If You Switch From Time-Warner Cable to Liberty Cable." The flyer listed seven things, including a few channel choices not available on Liberty. Today, Aurelio refers to Liberty as a "pimple."

Time-Warner is more worried, however, about a pending partnership between Liberty and the New York Telephone Company, which has a hundred and ten thousand miles of fibre-optic cable installed in the metropolitan area. Liberty could use the telephone company's cables and sophisticated switching devices to offer customers what Liberty calls a video-dial-tone service. If this service is installed by the fall, as it can be, viewers might have to change the way they think of everything from chan-

FINALLY, there is the tale of a gnat driving a giant crazy. Little more than a year ago, companies that wished to use super-high radio frequencies were granted permission by the Federal Communications Commission to transmit television signals. Instead of having to dig



THEY'RE DOING IT AGAIN!

In the face of rising consumer dissatisfaction, Time Warner Cable of New York City (including Manhattan Cable and Paragon), just announced their third price increase in two years. How can they demand more money for less service?

Switch to Liberty Cable,
New York's New Cable Company.
Better Building-Wide Service At Half The Price.

After years of rising prices for poor cable service in New York, Liberty Cable is offering comprehensive cable programming